

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MIKELL S. WHEELER,

Plaintiff,

v.

BRUCE FARRIER, et al.,

Defendants.

Civil Action No. 12-7845 (MAS)

MEMORANDUM AND ORDER

It appearing that:

1. On December 13, 2012, Plaintiff filed his initial complaint in this matter. (ECF No. 1.) His initial complaint requested criminal charges be filed against Defendants Bruce Farrier and Elizabeth Smith. (*Id.*) Plaintiff also submitted an incomplete *in forma pauperis* application. (ECF No. 2.) Plaintiff failed to submit the required certified six month account statement with his application. *See* 28 U.S.C. § 1915(a)(2).

2. On March 13, 2013, this Court entered an order dismissing this case with prejudice because a “private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another.” *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973). (ECF No. 4.)

3. On April 8, 2013, Plaintiff filed an “amended complaint,” pursuant to 42 U.S.C. § 1983, against the same defendants. (ECF No. 5.)

THEREFORE, it is on this 27th day of August, 2013;

ORDERED that the Clerk of the Court shall RE-OPEN the file in this matter to consider Plaintiff’s amended complaint; and it is further

ORDERED that the Clerk of the Court is instructed to file the amended complaint (ECF No. 5) as the first entry in a new civil action; and it is further

ORDERED that the Clerk of the Court shall file this Order as the second entry in the new civil action; and it is further

ORDERED that the Clerk of the Court shall administratively terminate the new case, without filing the complaint or assessing a filing fee; Plaintiff is informed that administrative termination is not a “dismissal” for purposes of the statute of limitations, and that if the case is reopened, it is not subject to the statute of limitations time bar if it was originally filed timely, *see Jenkins v. Superintendent of Laurel Highlands*, 705 F.3d 80, 84 n.2 (3d Cir. 2013) (describing prisoner mailbox rule generally); *Dasilva v. Sheriff's Dept.*, 413 F. App'x 498, 502 (3d Cir. 2011) (“[The] statute of limitations is met when a complaint is submitted to the clerk before the statute runs”); and it is further

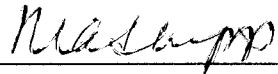
ORDERED that the Clerk of the Court shall send Plaintiff the form entitled “Affidavit of Poverty and Account Certification (Civil Rights)(DNJ-ProSe-007-A(Rev. 09/09)); and it is further

ORDERED that if Plaintiff wishes to reopen the new case, he shall so notify the Court, in writing, addressed to the Clerk of the Court, Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street, Trenton, NJ 08608, within 30 days of the date of entry of this Order; Plaintiff's writing shall include either (1) a complete, signed *in forma pauperis* application, including a certified six-month prison account statement, or (2) the \$350 filing fee; and it is further

ORDERED that upon receipt of a writing from Plaintiff stating that he wishes to reopen this case, and either a complete *in forma pauperis* application or filing fee, within the time allotted by this Court, the Clerk of the Court will be directed to reopen the new case; and it is further

ORDERED shall serve a copy of this Order upon Plaintiff by regular U.S. mail; and it is further

ORDERED that the Clerk of the Court shall CLOSE the file in this matter.



MICHAEL A. SHIPP
United States District Judge